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No. 01-569

In the Supreme Court of the United States

KATHY LYON, ET AL., PETITIONERS

v.

AGUSTA S.P.A., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether it violates the due process or equal protection guarantees of the Fifth Amendment to apply the General Aviation Revitalization Act of 1994 (GARA), Pub. L. No. 103-298, 108 Stat. 1552, to extinguish tort claims arising out of an aircraft accident that occurred before the GARA's date of enactment where suit was filed after that date.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-23) is reported at 252 F.3d 1078. The orders of the district court (Pet. App. 24-34) are unreported.

JURISDICTION

On February 23, 2001, the court of appeals granted the motion of the United States to intervene in the case pursuant to 28 U.S.C. 2403. The judgment of the court of appeals was entered on June 7, 2001. A petition for rehearing was denied on July 3, 2001. Pet. App. 35-38. The petition for a writ of certiorari was filed on October 1, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The General Aviation Revitalization Act of 1994 (GARA), Pub. L. No. 103-298, 108 Stat. 1552, is a federal statute of repose governing suits for damages against the manufacturers of "general aviation aircraft" and the manufacturers of new components, systems, subassemblies, and other parts of such aircraft. The term "general aviation aircraft" generally encompasses aircraft that (1) are not engaged in scheduled passenger-carrying operations and (2) have a maximum seating capacity of fewer than 20 passengers. See GARA § 2(c), 108 Stat. 1553.

Congress enacted the GARA to revitalize the American general aviation industry, which had experienced a sharp decline in production due, in part, to increases in tort liability that were viewed as unreflective of the industry's production and safety record. See H.R. Rep. No. 525, 103d Cong., 2d Sess. Pt. 1, at 1-4 (1994); H.R. Rep. No. 525, *supra*, Pt. 2, at 3-7; S. Rep. No. 202, 103d Cong, 1st Sess. 1-4 (1993). In furtherance of that objective, Section 2(a) of the GARA provides that "[e]xcept as provided in subsection (b), no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred * * * after the applicable limitation period." GARA § 2(a), 108 Stat. 1552.[1]

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[1] Section 2(b) excepts the following claims from the general prohibition of civil actions in Section 2(a): (1) claims premised on a manufacturer's knowing misrepresentation to, or concealment or withholding of certain information from, the Federal Aviation

The statutory "limitation period" is 18 years, GARA § 3(3), 108 Stat. 1553, and the 18-year period begins running on (1) "the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer"; (2) "the date of first delivery * * * to a person engaged in the business of selling or leasing such aircraft"; or (3) if a new or replacement component, system, subassembly or other part is alleged to have caused the injury, the date of completion of the replacement or addition. GARA § 2(a), 108 Stat. 1552. Section 2(d) of the GARA provides that "[t]his section supersedes any State law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable limitation period for such civil action[.]" GARA § 2(d), 108 Stat. 1553.

Section 4 of the GARA addresses the statute's effective date. GARA § 4, 108 Stat. 1554. Section 4(a) provides that "[e]xcept as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act," which is August 17, 1994. GARA § 4(a), 108 Stat. 1554. Section 4(b) provides that "[t]his Act shall not apply with respect to civil actions commenced before the date of the enactment of this Act." GARA § 4(b), 108 Stat. 1554.

2. This case concerns the crash of a general aviation aircraft on November 26, 1993, in Santa Monica, California, which killed the three occupants of the plane (Roy Belzer, Steven Pollack, and David Lyon). Pet.

Administration; (2) claims concerning the injury or death of a person who was a passenger on the aircraft "for purposes of receiving treatment for a medical or other emergency"; (3) claims made on behalf of persons who were "not aboard the aircraft at the time of the accident"; and (4) claims "brought under a written warranty enforceable under law but for the operation of [the GARA]." GARA § 2(b), 108 Stat. 1552-1553.

App. 24. The engine and various other parts and components of the aircraft were manufactured by respondent Siai Marchetti Corporation, an instrumentality of the Republic of Italy. See *id.* at 25. The aircraft was sold and directly delivered to its original purchaser (the Belgian airline, SA Sabena N.V.) in Belgium in December 1970. *Id.* at 5.

Belzer's survivors filed suit against the defendants before the GARA was enacted. See Pet. 3-4. Petitioners—the estates of Lyon and Pollack and their survivors—filed similar suits in November 1994, nearly three months after Congress enacted the GARA. See Pet. App. 5-6. The defendants moved to dismiss petitioners' suits, arguing that their claims are barred under the GARA and under the Foreign Sovereign Immunities Act of 1976. See *id.* at 24-28. Petitioners argued that the GARA did not apply to their suits and that it would be unconstitutional for the GARA to bar their claims. See *id.* at 26-27.

3. The district court dismissed petitioners' complaints. Pet. App. 24-29. The court held that the GARA applies to petitioners' suits and that the statute is constitutional. *Id.* at 26-27.[2]

4. Petitioners appealed, and the court of appeals affirmed, holding that the GARA applied to petitioners' suits (Pet. App. 13-14) and is constitutional (*id.* at 15-

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[2] The court also held (Pet. App. 28) that petitioners had alleged facts that, if true, would be sufficient to establish subject matter jurisdiction under 28 U.S.C. 1605(a)(2), which provides that a foreign state shall not be immune from suit in any case "in which the action is based upon * * * an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States."

20).[3] The court held that application of the GARA to this case did not violate the substantive component of the Due Process Clause because petitioners had no vested property right in their cause of action. Pet. App. 15. The court also rejected petitioners' contention that application of the GARA would violate their procedural due process rights in that it would violate the principle that "a statute of limitations cannot be shortened in a way that eliminates the plaintiff's ability to file an action." *Id.* at 16. The court explained that "GARA is not a statute of limitations, and does not shorten any statute of limitations. It is * * * a statute of repose." *Ibid.*

The court (Pet. App. 18-20) further rejected petitioners' contention that the GARA violates their equal protection rights by according more favorable treatment to individuals who had already filed suit as of the date on which the statute was enacted. The court held that "Congress rationally can, and did, offer special protection to those who had already filed their actions." *Id.* at 20.[4]

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[3] The court of appeals also held that the district court had subject matter jurisdiction under 28 U.S.C. 1605(a)(2). Pet. App. 7-11.

[4] The court of appeals also rejected petitioners' contentions that (1) a new 18-year period of repose started running against respondent Marchetti under Section 2(a)(2) of the GARA, 108 Stat. 1552, and (2) petitioners should have been permitted to amend their complaint to invoke Section 2(b)(1) of the GARA, 108 Stat. 1552-1553, which exempts certain claims concerning knowing misrepresentations to the FAA. See Pet. App. 20-22. Petitioners do not renew those arguments in this Court.

ARGUMENT

The court of appeals correctly rejected petitioners' constitutional claims, and its ruling does not conflict with any decision of this Court or of any other court of appeals. This Court's review therefore is not warranted.

1. Petitioners contend (Pet. 7-11) that the court of appeals' decision conflicts with the principle that a statute of limitations cannot be applied retroactively to bar an accrued cause of action without allowing the plaintiff a reasonable period of time in which to file suit after enactment of the new statute of limitations. See, *e.g.*, *Block* v. *North Dakota*, 461 U.S. 273, 286 n.23 (1983); *Ochoa* v. *Hernandez y Morales*, 230 U.S. 139, 161-162 (1913); *Wilson* v. *Iseminger*, 185 U.S. 55, 62-63 (1902). But the GARA is a statute of repose, not a statute of limitations. See H.R. Rep. No. 525, *supra*, Pt. 1, at 1 ("The reported bill establishes an 18 year statute of repose for a civil action against an aircraft manufacturer for damages arising out of an accident involving a general aviation aircraft."); H.R. Rep. No. 525, *supra*, Pt. 2, at 2 ("S. 1458, the 'General Aviation Revitalization Act of 1994,' would impose a Federal statute of repose on civil actions for death or injury, or damage to property, relating to general aviation aircraft.").

In general, "a statute of limitations establishes the time period within which lawsuits may be commenced after a cause of action has accrued." *Stuart* v. *American Cyanamid Co.*, 158 F.3d 622, 627 (2d Cir. 1998), cert. denied, 526 U.S. 1065 (1999). A statute of limitations "is an affirmative defense, affecting the remedy, but not the existence of the underlying right." *Ibid.* Statutes of limitations "are practical and pragmatic devices to spare the courts from litigation of stale

claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost." *Chase Sec. Corp.* v. *Donaldson*, 325 U.S. 304, 314 (1945).

When it enacts a statute of limitations, the legislature places a time limit on judicial recourse without eliminating the underlying right itself. Because the underlying right is left intact, there is ordinarily no reason to deny a plaintiff a reasonable period of time within which to enforce that right judicially.

Allowing a plaintiff a reasonable period of time to sue on an existing cause of action reflects the flexible character of limitations periods. That flexibility is illustrated by the doctrine of equitable tolling, which allows for the adjustment of a limitations period based on considerations of fairness to plaintiffs. See, *e.g.*, *Iavorski* v. *United States INS*, 232 F.3d 124, 129 (2d Cir. 2000) ("Equitable tolling applies 'as a matter of fairness where a [party] has been prevented in some extraordinary way from exercising his rights.'").

Similar considerations of fairness also support the principle that allows litigants a reasonable opportunity to sue on a cause of action when the applicable limitations period is retroactively shortened, but the cause of action itself is not abolished. As the court of appeals recognized (Pet. App. 16), however, that principle does not apply to statutes of repose like the GARA. Unlike a statute of limitations, "a statute of repose extinguishes the cause of action, the right, after a fixed period of time, usually measured from the delivery of the product or completion of work, regardless of when the cause of action accrued." *Stuart*, 158 F.3d at 627; see also *Amoco Prod. Co.* v. *Newton Sheep Co.*, 85 F.3d 1464, 1472 (10th Cir. 1996) (explaining that statute of repose, unlike statute of limitations, creates substantive right

to be free from liability and therefore is not susceptible to tolling). The focus of statutes of repose is thus on the substantive interests of the defendants in avoiding liability, not on the balancing of competing procedural equities (*i.e.*, the interest in avoiding litigation of stale claims and the interest in affording plaintiffs sufficient time to develop claims and file suit).

Considerations of fairness to plaintiffs carry little (if any) weight in applying a statute of repose. Indeed, the "very purpose [of statutes of repose] is to set an outer limit unaffected by what the plaintiff knows," *Cada* v. *Baxter Healthcare Corp.*, 920 F.2d 446, 451 (7th Cir. 1990) (Posner, J.), cert. denied, 501 U.S. 1261 (1991), in order to relieve defendants of the cost and uncertainty of unbounded liability. Accordingly, "[t]he doctrine of equitable tolling does not apply to statutes of repose." *Weddel* v. *Secretary of Health & Human Servs.*, 100 F.3d 929, 931 (Fed. Cir. 1996); see also *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350, 363 (1991) ("The * * * limit is a period of repose inconsistent with tolling."); *Joseph* v. *Wiles*, 223 F.3d 1155, 1166 (10th Cir. 2000); *J.E. Liss & Co.* v. *Levin*, 201 F.3d 848, 849 (7th Cir. 2000); *Cada*, 920 F.2d at 451 (neither equitable estoppel nor equitable tolling applies to statutes of repose).

Where, as here, Congress enacts a statute of repose and thereby eliminates a substantive cause of action, there is nothing inherently irrational about eliminating the cause of action retroactively, as well as prospectively, or doing so immediately. And as long as retroactive economic legislation rationally furthers a legitimate legislative purpose, it satisfies the Due Process Clause. See, *e.g.*, *General Motors Corp.* v. *Romein*, 503 U.S. 181, 191 (1992).

As the court of appeals recognized (Pet. App. 17), the GARA, by eliminating specified causes of action arising out of general aviation aircraft accidents, rationally furthers Congress's interest in revitalizing the general aviation industry. See H.R. Rep. No. 525, *supra*, Pt. 1, at 1-4; H.R. Rep. No. 525, *supra*, Pt. 2, at 3-7; S. Rep. No. 202, at 1-4. Congress was not constitutionally required to provide petitioners with the opportunity to file suit on causes of action that it validly eliminated.

2. The court of appeals (Pet. App. 18-20) also correctly rejected petitioners' equal protection claim. Petitioners contend (Pet. 11-15) that applying the GARA to bar their claims would irrationally accord more favorable treatment to individuals who filed suit on their accrued causes of action before the enactment of the GARA, to whom the GARA expressly does not apply. See GARA § 4(b), 108 Stat. 1554. However, applying the statute to petitioners clearly furthers the GARA's central purpose: protecting general aviation aircraft manufacturers from liability for injuries arising out of accidents occurring more than 18 years after their work was completed. Accordingly, petitioners can only complain of Congress's decision to exempt suits duly filed.

Although the GARA's central purposes would be furthered by barring pending claims that come within the statute's coverage, Congress could rationally conclude that individuals who already had affirmatively filed suit on their claims had different interests at stake than individuals (like petitioners) who had not. See Pet. App. 19-20. Indeed, the different nature of those interests has led this Court to adopt a presumption against interpreting ambiguous legislation to apply retroactively to pending cases. See *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 265-267 (1994). In light of that

presumption, it can hardly be irrational for Congress to limit the extent to which a statute applies retroactively.

It is well established that Congress is not required to "choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge* v. *Williams*, 397 U.S. 471, 486-487 (1970). Because the line drawn by Congress in this case "has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequity.'" *Schweiker* v. *Wilson*, 450 U.S. 221, 234 (1981) (quoting *Dandridge*, 397 U.S. at 485, and *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)); *Bowen* v. *Gilliard*, 483 U.S. 587, 600-601 (1987). Accord *Heller* v. *Doe*, 509 U.S. 312, 319-321 (1993); *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313 (1993); *United States R.R. Ret. Bd.* v. *Fritz*, 449 U.S. 166, 175-176 (1980).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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It is well established that Congress is